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No. _____

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IN THE SUPREME COURT

OF THE

UNITED STATES

OCTOBER TERM, 1983

STATE BOARD OF EQUALIZATION

Petitioner,

v.

TRAILER TRAIN COMPANY, a corporation, and RAILBOX COMPANY, a corporation,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

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QUESTIONS PRESENTED

1. In petitioner Board's property tax assessment of respondent's railroad cars, did petitioner comply with section 306 of the Railroad Revitalization and Regulatory Reform Act [1] (4-R Act) by applying a tax rate which was consistent with the average tax rate applied to all other commercial and industrial personal property in California, or must the Board's tax rate be comparable with whatever type of California tax role which contains the majority of California's commercial and industrial property of all types (both real and personal property)?

2. Should certiorari be granted to resolve the conflict between the Ninth Circuit's decision in this case and the Fourth Circuit's decision in Clinchfield

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1. The Railroad Revitalization and Regulation Reform Act of 1976 is codified at 49 U.S.C. 11503 et. seq.

Railroad Company v. Lynch (Fourth Circuit 1983) 700 F.2d 126?

3. In granting injunctive relief under the 4-R Act without first determining whether the standard prerequisites for a preliminary injunction had been met, is the Ninth Circuit's decision inconsistent with Weinberger v. Romero-Barcelo (April 22, 1983) ___ U.S. ___, 72 L.Ed.2d 91?

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The State Board of Equalization of the State of California prays that a writ of certiorari issue to review portions of the decision of the United States Court of Appeals for the Ninth Circuit, filed in the above-entitled case on January 25, 1983.

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OPINION BELOW

The opinion of the District Court, printed in Appendix A hereto, infra, p. A1, is reported at 511 F. Supp. 553 (N.D.Cal. 1981). The opinion of the Court of Appeals, printed in Appendix B hereto, infra, p. B1 is reported at 697 F.2d 860 (9th Cir. 1983).

JURISDICTION

On January 25, 1983, the Court of Appeals filed its opinion in this case (Appendix B, infra, p. B1). On February 8, 1983, petitioner filed its petition for rehearing. On March 7, 1983, the Court of Appeals filed its order denying the petition for rehearing (Appendix C, infra, p. C1). On May 11, 1983, this Court issued its order extending until July 5, 1983, the time within which petitioner must file its petition for writ of certiorari.

The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1) and 28 U.S.C. § 2101(e).

QUESTIONS PRESENTED

1. In petitioner Board's property tax assessment of respondent's railroad cars, did petitioner comply with section 306 of the Railroad Revitalization and Regulatory Reform Act [1] (4-R Act) by applying a tax rate which was consistent with the average tax rate applied to all other commercial and industrial personal property in California, or must the Board's tax rate be comparable with whatever type of California tax role which contains the majority of California's commercial and industrial property of all types (both real and personal property)?

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1. The Railroad Revitalization and Regulation Reform Act of 1976 is codified at 49 U.S.C. 11503 et. seq.

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STATUTES INVOLVED

Reference is made herein to section 306 of the Railroad Revitalization and Regulatory Reform Act of 1976, 49 U.S.C. 11503 et seq. Pertinent portions of 49 U.S.C. 11503 are set forth in Appendix D, infra, p. D1.

Reference is also made herein to the Jarvis-Gann Initiative, Proposition 13, California Constitution, article XIII A (Appendix E, infra, p. E1); California Constitution, article XIII, section 2 (Appendix F, infra, p. F1); and California Business and Professions Code section 11401 (Appendix G, infra, p. G1).

STATEMENT OF THE CASE

Petitioner State Board of Equalization initially assessed respondents' railroad cars at the rate of 4.85 dollars per hundred dollars of assessed value for the 1978-79 tax year. The tax rate of 4.85 is equivalent to the estimated average rate of general (real and personal) property taxation for the 1978-79 tax year. The use of said tax rate is based on the Board's understanding that such assessment was required in order to comply with the limitations of

Proposition 13 (Cal. Const. art. XIII A), which dramatically reduced the tax rates on real property, and California Constitution, article XIII, section 2, which apparently prohibited the taxation of personal property at a rate greater than that applied to real property. In assessing respondents' railroad cars, it would have been impossible for petitioner to also comply with California Revenue and Taxation Code section 11401, which authorizes petitioner to assess all railroad cars in California at the previous year's average rate of general property taxation, which was 10.68.

Subsequently, on August 14, 1980, the California Supreme Court issued its decision in Board of Supervisors v. Lonergan (1980) 27 Cal.3d 855, holding that Proposition 13 did not apply to property on the unsecured tax roll, which consists primarily of personal property;

and that California Constitution, art. XIII, section 2 did not prevent different tax rates becoming applicable to the secured and unsecured rolls due to the enactment of Proposition 13. In order to comply with the Lonergan case and Cal. Rev. and Tax. Code § 11401, petitioner proceeded to amend its assessment of plaintiff's railroad cars to the tax rate of 10.68, the average rate of general property taxation for the previous year, the 1977-78 tax year. Petitioner's amendment of its assessments of all railroad cars resulted in an additional tax in the amount of $1,278,700.31 for respondent Trailer Train Company, and $275,710.20 for respondent Railbox Company. Respondents, objecting to the collection of those additional taxes, initiated the lawsuit herein. In addition, there are four additional actions which have been

filed on behalf of six other railroad car leasing companies which are pending in the United States Court of Appeals for the Ninth Circuit and awaiting the outcome of this case.[2/]

In its opinion, the Court of Appeals affirmed in part and remanded in part the decision of the District Court. That portion of the case which has been remanded is pending in the District Court.

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2. Pullman Leasing Co. v. State Board of Equalization No. 82-4073
General American Transportation Co. v. State Board of Equalization No. 82-4117
Evans Railcar Leasing Co., et al. v. State Board of Equalization No. 82-4120
ACF Industries, Inc., et al. v. State Board of Equalization No. 82-4121

REASONS FOR GRANTING THE WRIT

1. THERE IS A CONFLICT IN THE APPLICATION OF THE LAW BETWEEN DECISIONS OF THE NINTH CIRCUIT AND FOURTH CIRCUIT COURTS OF APPEALS; THE FOURTH CIRCUIT'S APPROACH SHOULD BE ADOPTED BY THIS COURT.

A. The Ninth Circuit's Decision Herein Is Contrary In A Significant Respect To the Fourth Circuit's Decision In Clinchfield Railroad Company v. Lynch.

In determining whether petitioner had assessed respondents' railroad cars at a discriminatory tax rate in violation of the 4-R Act, the Court of Appeals instructed the District Court to compare the tax rate applied to respondent's railroad cars with the rate applied to either the secured tax roll (primarily real property) or the unsecured tax roll (primarily personal property) depending on which tax roll contained the majority of all commercial

and industrial property in the state in tax year 1978-79.[3/] The Court rejected petitioner's arguments that since the railroad cars involved in the case were personal property, the comparison should be made with the average tax rate applicable to all commercial and industrial personal property in the state. Petitioner argued that personal and real property should be distinguished when comparing tax rates under the 4-R Act, because real property is assessed at a substantially lower value than personal property, and such distinction was intended by Congress in enacting the 4-R Act.

The failure of the Ninth Circuit to recognize the distinction between personal and real property in its

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4. The Court of Appeals uses the language "fiscal year 1978-79" which corresponds with "tax year 1978-79".

instructions to the District Court, places it directly in conflict with the Fourth Circuit's decision in Clinchfield Railroad Company v. Lynch (Fourth Circuit 1983) 700 F.2d 126.

In Clinchfield, the railroad company charged the state of North Carolina with a violation of the 4-R Act for assessing its real and personal railroad property at tax rates in excess of those applied to non-railroad real and personal property. The Fourth Circuit stated that, provided that the breakdown of the railroad's property between personal and real was available, the rate applied to the plaintiff's personal property should be compared with the rate applied to all non-railroad commercial and industrial personal property and the rate applied to plaintiff's real property should be compared with the rate applied to all non-railroad commercial

and industrial real property. However, the court upheld the District Court's decision against the state of North Carolina on the ground that the state had failed to provide to the court the percentage breakdown of plaintiff's property between personal and real, thereby making it impossible for the court to make the rate comparisons of personal with personal and real with real. At footnote 2, the court cites with approval the following comments by the Senate Committee on Commerce in a bill substantially similar to section 306 of the 4-R Act:

> "[The bill] is not intended to interfere with the classification of property by a State for rate purposes into the traditional breakdown of real property, tangible personal property, and intangible property, provided that carrier transporation real property is taxed at no higher rate than other real property, that carrier transportation personal

> property is taxed at no higher rate than other personal property, and that carrier transportation tangibles are taxed at no higher rate than other intangible property." Id., p. 129.

Near the conclusion of its opinion, the court went on to state:

> ". . . . The statute makes clear that personal property, as well as real estate, is to be dealt with in the course of achieving equality and thereby eliminating discrimination . . . . We do not accept the proposition that only proof as to real estate discrepancies was to be obtained, and then applied indiscriminately to both personal property and real property owned or used by the railroads." Id. at p. 133.

The significance of this conflict between the Circuits is illustrated by the plain intent of Congress in an early version of the 4-R Act[4/] that a distinction be made between personal and real property.

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4. Pertinent portions of S.2289 are printed in Appendix H, infra, p. H1.

> "Subparagraph (c) of S.2289 is not intended to abrogate the right of a State to establish separate rates for the different traditional classes of property. That is, the language of subparagraph (c) is not intended to interfere with the classification of property by a State for rate purposes into the traditional breakdown of real property, tangible personal property, and intangible property, provided that carrier transportation real property is taxed at no higher rate than other real property; that carrier transportation personal property is taxed at no higher rate than other personal property; and that carrier transportation intangibles are taxed at no higher rate than other intangible property. (Emphasis ours). Senate Report 91-630, 91st Congress, Re: S.2289, December 20, 1969, p. 11.

The Fourth Circuit's decision in Clinchfield leaves no doubt that in distinguishing between personal and real property, it would have decided the instant case in favor of petitioner. In this case, petitioner provided the District Court the estimated average tax rate for all commercial and industrial

personal property in the state.[5/] This tax rate was estimated to be 10.63, which is very close to the rate of 10.68 applied to respondent's railroad cars.

It seems clear that the Fourth Circuit, consistent with petitioner's approach, would have compared the tax rate applied to respondents' railroad cars, which are personal property, with the average tax rate applied to all commercial and industrial personal property in the state. Had the Ninth Circuit instructed the District Court to apply this comparison, the likely result would be a drastic reduction in respondent's recovery.

B. It Is Necessary That This Conflict Be Resolved At The Earliest Possible Date.

This Petition for Writ of Certiorari should be granted because it

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5. See Declaration of Jeffery L. Reynolds, Appendix I, infra, p. Il.

is necessary that this conflict be resolved as soon as possible. The question concerning which there is a conflict is crucial to the assessment of railroad property generally. Since the states customarily assess railroad property annually, the large amount of money at issue increases each year. The amount at issue in the limited context of pending litigation between petitioner and railroad car leasing companies in California totals $1,252,925. In addition to the four railroad car leasing company cases listed in footnote 2, there are at least nine more cases pending in the Northern District of California involving similar issues of the

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interpretation of the 4-R Act.[6/] The amount of Proposition 13 relief sought by plaintiffs in these nine cases exceeds $10,000,000 a year. If this conflict between the Circuits is not quickly resolved, the resulting

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6. Southern Pac. Trans. Co. v. State of Cal. #C 81-4848 SW
Southern Pac. Trans. Co. v. State of Cal. #C 82-6009 SW
Atchison, Top. & S.F. v. State of Cal. #C 82-6030 SW
Trailer Train v. State BOE, State of Cal. #C 82-6084 SW
Railgon Co. v. State BOE, State of Cal. #C 82-6085 SW
Railbox Co. v. State BOE, State of Cal. #C 82-8086 SW
Pullman Leasing Co. v. BOE, State of Cal. #C 82-6031 SW
Gen. American Trans. Co. v. ACF Ind. #C 82-6600 SW
ACF Ind. Inc. v. State BOE, State of Cal. #C 82-6512 SW

Each of these cases involves a lawsuit by a railroad or private car company under 49 U.S.C. 11503 for a refund of taxes paid for past years and an injunction enjoining the collection of future taxes. The principal issue in each of these cases is the application of Proposition 13 to the respective assessments.

inconsistent application of the 4-R Act will lead to large discrepancies between the states in different Circuits in the taxation of railroad property. As many railroad companies own property in more than one jurisdiction, this conflict could lead to the anomalous result that the property of a railroad company will be assessed under entirely different formulae dictated by the federal courts depending upon the jurisdiction in which their property is located. This result might well encourage railroad companies to relocate their mobile transportation property between jurisdictions in order to take advantage of this inconsistency, a result certainly not intended by the 4-R Act. In fact, this result is directly contrary the tax intent of the 4-R Act to do away with unreasonable burdens on interstate commerce. 49 U.S.C. 11503(b). Moreover, the resulting lack

of uniformity in the taxation of rail transportation property is also contrary to obvious intent of the 4-R Act to bring about uniformity in the taxation of such property.

2. THERE IS A CONFLICT BETWEEN THIS CASE AND WEINBERGER v. ROMERO-BARCELO (April 22, 1983) _____ U.S. _____, 72 L.Ed.2d 91.

The Court of Appeals concluded in its opinion below that the District Court did not err in granting injunctive relief under the 4-R Act without first determining that the standard prerequisites for a preliminary injunction had been met, on grounds that the 4-R Act specifically authorized injunctive relief to prevent a violation of its terms.[7] This is contrary to this Court's holding in the recent case of

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7. 697 F.2d at 869.

Weinberger v. Romero-Barcelo (April 22, 1983) ____ U.S. ____, 72 L.Ed.2d 91.

In Weinberger, in which the plaintiff sought an injunction to enjoin further violations of the Federal Water Pollution Control Act, the First Circuit determined that the District Court erred in undertaking a balancing of the parties' equities and in failing to enjoin further violations of the Act. This Court reversed, holding that even though a federal statute may provide for injunctive relief, the District Court should issue an injunction only after applying the traditional equitable considerations for injunctive relief. Citing language from its decision in Porter v. Warner Holding Co., 328 U.S. 395, 398 (1946), this Court stated:

> "Moreover, the comprehensiveness of this equitable jurisdiction is not to be denied or limited in the absence of a clear and valid legislative command. Unless a statute in so many words, or by a

> necessary and inescapable inference, restricts the court's jurisdiction in equity, the full scope of that jurisdiction is to be recognized and applied. 'The great principles of equity, securing complete justice, should not be yielded to light inferences, or doubtful construction.'" Brown v. Swann, 10 Pet 497, 503 [9 L.Ed. 508] Id., at p. 99.

The court then went on to state:

> "This Court explained in Hecht v. Bowles, 321 US 321, 88 L.Ed. 754, 64 S. Ct. 587 (1944), that a major departure from the long tradition of equity practice should not be lightly implied. As we did there, we construe the statute at issue 'in favor of that interpretation which affords a full opportunity for equity courts to treat enforcement proceedings . . . in accordance with their traditional practices, as conditioned by the necessities of the public interest which Congress has sought to protect.'" 821 US, at 330, 88 L.Ed. 754, 64 S.Ct. 587. Id., at p. 103.

It is clear from the language and legislative history of the 4-R Act that Congress did not intend to remove from the district courts, the power to weigh equitable considerations before issuing injunctive relief for alleged violations thereof. As held in Weinberger, such

an infringement on States' Rights should be explicitly set forth in the statute.

In section 11503, the words "injunction" or "injunctive relief" do not even appear. It is quite apparent that Congress, in providing for federal court jurisdiction and a remedy for violations of the 4-R Act, was only concerned with making this Act an exception to the Anti-injunction Act, 28 U.S.C. section 1341, to give the district courts the power to issue injunctive relief whenever such a remedy is necessary.

The conclusion that Congress did not intend that the 4-R Act displace traditional and equitable criteria in the granting of injunctive relief is inescapable from the following excerpt from the legislative history of the 4-R Act:

> "Enactment of this section will not necessarily mean the Federal Courts will enjoin all state taxation of rail property which are the subject of complaint. The railroads will

> still have the burden of demonstrating that discrimination exists. They will also have to make the additional showing that they are entitled to injunctive relief. With respect to the latter issue, the courts in the exercise of equity jurisdiction will balance the adverse impact on the community of granting such relief against the benefits to the carrier from such relief. The Federal courts will be able to devise remedies that will not be burdensome to the communities involved. (Emphasis added).

House Rep. 94-725, 94th Cong., 1st Sess. (1975).

As pointed out under topic IB above, there are thirteen 4-R Act cases which are pending within the Ninth Circuit. Plaintiffs in several of these cases sought injunctions for alleged violations of the 4-R Act. Moreover, actions to enjoin alleged violations of the 4-R Act are being filed throughout the country. In order to bring about uniformity in the handling of these cases, it is highly important that this Court

clear up this conflict by setting forth the correct standard for the issuance of injunctive relief in 4-R Act cases.

CONCLUSION

For all of the reasons stated herein, a writ of certiorari should issue to review the opinion of the United States Court of Appeals for the Ninth Circuit.

DATED: July 1, 1983

Respectively submitted,

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APPENDIX A

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

TRAILER TRAIN COMPANY, a corporation and RAILBOX COMPANY, a corporation,	)	NO. C-80-4399 SW
Plaintiffs,	)	
v.	)	
STATE BOARD OF EQUALIZATION,	)	
Defendant.	)	

OPINION AND ORDER GRANTING PLAINTIFF'S MOTION FOR PRELIMINARY INJUNCTION

INTRODUCTION

The court originally issued its order in this case March 10, 1981. That order is hereby amended to clarify the court's opinion.

This action involves a challenge to action taken by defendant State Board of Equalization (the "Board") by which it informed plaintiffs Trailer Train Company (Trailer") and Railbox Company

("Railbox") that the tax rate on their rail cars for 1978 would be more than doubled. Plaintiffs contend defendant violated section 306 of the Railroad Revitalization and Regulatory Reform Act of 1976 (the 4-R Act) by discriminatory property tax treatment of plaintiffs' rail property. Accordingly, plaintiffs sought a preliminary injunction to enjoin the Board from collecting the additional taxes.

This case recently came before the court on plaintiffs' motion for a preliminary injunction. The question presented was whether imposition of the additional tax impermissibly conflicts with federal law prohibiting the taxation of rail transportation property at a rate higher than the rate generally applicable to commercial and industrial property in the same assessment jurisdiction.

After careful consideration of the briefs and arguments of counsel, the pleadings, affidavits and other evidence in the record, the court concluded that this issue must be answered in the affirmative and orally granted the motion. The following constitutes a brief statement of the court's reasons for so ruling, and its written order thereon.

FACTUAL BACKGROUND[1/]

On June 6, 1978, California voters approved Proposition 13 (now Article XIIIA of the California Constitution). Section 1 of Article XIIIA limited the ad valorem tax rate applicable to real property. The Board determined at the time that the Proposition 13 tax rate limitation must be applied not only to real property but to personal property as well on the basis of California Constitution Article XIII, Section 2

which requires that personal property not be taxed at a rate higher than real property in the same taxing jurisdiction. The Proposition 13 tax rate limitation took effect for the tax year beginning July 1, 1978.

On July 31, 1978, acting pursuant to the provisions of the Private Railroad Car Tax Law[2/] and Proposition 13, the Board valued all railroad cars owned or used by plaintiffs. Trailer and Railbox as of the lien date, March 1, 1978. The Board determined the full cash value of Trailer Train cars and Railbox cars to be $87,732,440 and $18,916,652 respectively. The Board determined the assessed value of Trailer Train cars and Railbox cars to be $29,933,110 and $4,729,163 respectively. Plaintiffs' railroad cars were initially given the benefit of the tax rate limitation for the 1978-79 tax year. Thus a tax rate of $4.85 per hundred

dollars of assessed value was levied on the 1978-79 assessed values of plaintiffs' property.

This situation remained unchanged until the California Supreme Court ruled in August 1980 in Board of Supervisors of San Diego v. Lonergan, 27 Cal.3d 855 (1980) that property on the 1978-79 unsecured tax roll is to be taxed at the 1977-78 secured rate rather than at the new Proposition 13 rates. The California court reasoned that taxes on the unsecured roll for 1978 were due and payable March 1, 1978, which was prior to the voter approval of the Proposition in June 1978, and therefore could not have been in the contemplation of the minds of the voters.

More importantly, the Longergan court explained that article XIII, section 12 of the California Constitution provided that taxes levied on property

not secured by real estate were based on the tax rate applied to secured property in the preceding tax year. The court held that Proposition 13 did not impliedly repeal section 12, and therefore the unsecured roll's rate has already been set for 1978-79 and could not be reduced by referring to the lower rates established by the newly passed proposition.

Since private railroad cars are by statute taxed at the prior year's average rate of general property taxation in the State, the Board concluded that Lonergan required that the 1977-78 average rate of general property taxation be applied to plaintiffs' property for the 1978-79 tax year rather than the tax rate as limited by Proposition 13. Thus, in September, 1980, the Board imposed a tax on the 1978-79 assessments of plaintiffs' property at the rate of 10.68 dollars per hundred dollars of assessed value, less

the amount of the tax previously paid at the rate of 4.85 dollars per hundred dollars of assessed value. This resulted in a tax increase of $1,278,700.31 on Trailer Train property and $275,210.20 on Railbox property for the 1978-79 tax year.

LEGAL STANDARDS

Plaintiffs in this action for injunctive relief contend defendants have violated section 306 of the Railroad Revitalization and Regulatory Reform Act of 1976 (the 4-R Act[3/]), by discriminatory property tax treatments of plaintiffs' rail transportation property. Section 306(1) (c) provides that a state may not levy or collect "any ad valorem property tax on transportation property at a tax rate higher than the tax rate generally applicable to commercial and industrial property in the same assessment jurisdiction."

Section 306(s)(e) further provides that "in the event that the ratio of the assessed value of all other commercial and industrial property in the assessment jurisdiction to the true market value [of such property] cannot be established . . ." the court shall hold unlawful "the collection of any ad valorem property tax on such transportation property at a tax rate higher than the tax rate generally applicable to taxable property in the taxing district."

Finally, section 306(2) expressly authorizes federal district courts "to grant such mandatory or prohibitive injunctive relief, interim equitable relief, and declaratory judgments as may be necessary to prevent, restrain, or terminate any acts in violation of this section."

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ANALYSIS

The facts in this case make it fairly obvious that the Board taxed the plaintiffs' rail transporation property at a rate that is higher than that generally applicable to taxable property in the taxing district. By its October 10, 1980 letter, the Board attempted to levy a tax on plaintiff's property at the rate of 10.68 dollars per hundred dollars of assessed value while it appears that the general property tax rate for the 1978-79 tax year was 4.70 per hundred dollars of assessed value. Therefore, if section 306 applies to this case, the California property tax on rail transportation property is in conflict with the mandates of this federal statute.

The Board first argues that section 306 does not apply to this case because the statute expressly limits itself to

discrimination exceeding five percent. Section 306(2)(c) provides:

> "(c) no relief may be granted under this section unless the ratio of assessed value to true market value, with respect to transportation property, exceeds by at least 5 per centum the ratio of assessed value to true market value, with respect to all other commercial and industrial property in the same assessment jurisdiction."

The Board argues that the 4-R Act's five percent jurisdictional requirement has not been met. This court disagrees. It is clear that Congress only intended the five percent limitation to be a threshhold requirement in assessment ratio discrimination cases.[4/] To require a showing of a five percent discriminatory ratio in a tax rate case, however, would frustrate the purpose of section 306. The minimum percentage rate was included in section 306 because Congress was not concerned with insignificant variations that might develop in state assessment

practices.[5/] Plainly, differences of much less than five percent in rate cases could still result in substantial discrimination against a particular classification of property.

The instant case is illustrative of the fact that a disparity in comparable tax rates can present more than an insignificant variation. To establish the degree of disparity in this case, it first must be determined the rates which are being compared. Defendant would have the court compare the rate applied to plaintiffs' rail transportation property with the rate applicable to all other personal property in the state. However, it is entirely inappropriate to compare plaintiffs' property with a hypothetical tax rate on personal property. First, tax rates were set only for the secured and unsecured rolls, each of which contains both personal

and real property.[6] Second, plaintiffs' property is not taxed on either the secured or unsecured rolls, but rather is assessed and taxed by the State Board of Equalization.

Section 306(2)(e) of the 4-R Act provides that when the comparable assessment ratio for industrial and commercial property is not available[7], the tax rate on the subject property must be compared with the tax rate generally applicable to taxable property in the taxing district.[8] In the present case, therefore, the tax rate on plaintiffs' property must be compared with the average tax rate for all property in the state.

The average rate for general property taxation for the 1978-79 tax year was 4.70 dollars perhundreddollars of assessed value. This rate, as previously mentioned, is substantially lower than

that applied to plaintiffs' rail transporation property. The result is a discriminatory tax rate for transportation property which must be enjoined.

The Board also contends that the 4-R Act does not apply to the tax assessment herein becaue it was allegedly assessed prior to the effective date of the act. Section 306(2)(b) states that "the provisions of this section shall not become effective until 3 years after the date of enactment of this section." The 4-R Act was passed on February 5, 1976 and thereby became effective on February 5, 1979.

The Board argues that its actions October 10, 1980 action was not assessing a new tax, but rather merely was "amending" a pre-1979 assessment. While defendant's argument is creative, it cannot be adopted in this case for several reasons.

First, and most significant, section 306's reach extends not only to the assessment of discriminatory taxes but to their collection as well. Assuming arguendo, defendant's "amendment" theory was accepted, it is entirely clear that the defendant still sought to collect this discriminatory tax well after the effective date of the federal statute.

Second, defendant's theory that it "amended" the prior assessment and did not levy a new tax against plaintiff's property defies common sense and ignores the legislative purpose of the delayed effective date of the act.

An examination of the legislative history of section 306 reveals that the Congressional purpose of delaying the effective date of the state for a period of three years was to afford states the time to eliminate any disparities that existed in their taxing system with

respect to transportation property.[9] It is incongrous that a state tax decision in 1980 to levy and collect additional taxes theretofore uncollected could not be held to violate a federal statute passed in 1976 which delayed its effective date only to permit time for corrective state measures. Clearly, the October 10, 1980 letter represents a new tax decision which violated the federal statute at that time.

Finally, as a matter of federal supremacy,[10] the power of the state to discriminate against rail transportion property for purposes of applying tax rates was preempted by the passage of the 4-R Act in 1976.

In passing section 306, Congress evidenced its intent to regulate the area of discriminatory taxation of transportation property. It is well established that when Congress acts in

such a way as to manifest its purpose to exercise its constitutional authority, the regulatory power of the state ceases to exist.[11]/

For example, in Erie Railroad v. New York, 233 U.S. 671, 681 (1913), the Court applied the preemption doctrine and struck down state legislation attempting to regulate the hours of service of railroad telegraph operators engaged in interstate commerce. The Court held that Congress had earlier acted in such a way as to manifest its purpose to exercise its constitutional authority over this activity, and therefore the regulatory power of the states was preempted. Id., at 681. As in the present case, the Erie Railroad Court held that the preemption doctrine applied from the time of the passage of the act notwithstanding the fact that its effective date was still in the future.

In the present case, the federal statute occupies the field regulating taxation of transportation property. The state cannot overturn this strong Congressional policy by the passage of Proposition 13 or its subsequent interpretation in Lorergan. Therefore, the federal statute requires the defendant to reduce the assessment ratio for railroad property to that generally applied to other property during the same tax year.

Section 306, by its own terms, authorizes a federal court to issue injunctions to prevent the enforcement of taxes which discriminate against rail transportation property. In this case, the injunction must issue as it is clear that a federal statute has been violated. Moreover, the plaintiffs have demonstrated a likelihood of success on the merits and irreparable harm.

It is now fairly well-established that when an injunction is sought to prevent the violation of a federal statute which specifically provides for injunctive relief, the normal requirements for equitable relief need not be satisfied.[12/] However, while this court need not inquire into the traditional grounds for equitable relief in a section 306 case,[13/] there exist other strong arguments why this injunction should issue.

As previously mentioned, the plaintiffs have an extremely strong argument on the merits. It additionally appears that the plaintiffs would suffer irreparable harm if the injunction is not granted. Pursuant to plaintiffs' request, this court is willing to take judicial notice of the fact that the prime interest rate far exceeds the twelve percent interest which would be paid by the state if plaintiffs were able

to obtain a refund. While defendant is correct that injunctions are usually inappropriate in cases where the loss may be measured by money damages,[14] a monetary award in this case would be inherently inadequate because the defendant would not be required to fully respond in damages in the event plaintiffs are successful on the merits.[15]

In light of the fact that the State of California could not have anticipated this tax revenue nor have utilized the windfall in planning its budget, it is difficult to perceive any significant hardships for the defendant if the injunction is granted. Moreover, the strong federal interest in eliminating discriminatory state taxation of transportation property evidenced by the passage of the 4-R Act further compels this court's conclusion.

CONCLUSION

The plaintiffs have demonstrated to the satisfaction of this court that it should exercise its remedial powers granted under section 306 by enjoining the taxation of rail transportation property at a rate higher than that generally applicable to other taxable property in the taxing district. Such a remedy is necessary to effectuate the Congressional policy under the 4-R Act.

Accordingly, IT IS HEREBY ORDERED that plaintiffs' Motion for a Preliminary Injunction is granted.

IT IS FURTHER ORDERED that plaintiffs' remaining monetary and pendent claims for relief are dismissed without prejudice.

DATED: March 30, 1981.

SPENCER WILLIAMS
United States District Judge

FOOTNOTES

1 Many of the facts set forth in this section of the opinion are taken from the document entitled "Stipulation of Facts" submitted to the court prior to the hearing on the motion for preliminary injunction.

2 Cal. Rev. & Tax Code, §§ 11201 et seq.

3 49 U.S.C. § 11503.

4 The assessment ratio of 25 percent is the same, of course, for all property on either the secured or unsecured roll and all parties concede that no discrimination exists with respect to this ratio.

5 Louisville & Nashville Railroad v. Louisiana State Tax Commission, 498 F.Supp. 418 (M.D. La. 1980).

6 The facts reveal that the unsecured roll contains only 67 percent personal property while the secured roll is comprised of almost 40 percent personal property.

7 Beginning in the 1978-79 tax year, the Board ceased to publish the ratios of assessed value to true market value for California counties, becaue with the adoption of Proposition 13, assessments in California are no longer based upon true market value.

8 To restrict comparison solely to the rate for the unsecured roll would violate this requirement

because it appears that this roll is applicable to only nine percent of all taxable property in the state. Additionally, if plaintiffs' property were taxed locally it would be entered on the secured roll.

9 See State of Tennessee v. Louisville & Nashville Railroad Co., 478 F.Supp. 199 209 (M.D. Tenn. 1979).

10 See U.S. CONST., Art. VI, cl. 2.

11 Ray v. Atlantic Richfield Co., 435 U.S. 151, 151 157 (1978).

12 United States v. City and County of San Francisco, 310 U.S. 16, 30-31 (1940). Lathan v. Volpe, 455 F.2d 1111, 1116-17 (9th Cir. 1971) Sierra Club v. Coleman, 405 F.Supp. 53, 54 (D.D.C. 1975).

13 Tennessee v. Louisville & Nashville Railroad Co. 478 F.Supp. 199, 210 (M.D. Tenn. 1979).

14 See, e.g., A.L.K. Corporation v. Columbia Pictures Industries, Inc., 440 F.2d 761 (2d Cir. 1971).

15 See Teamsters Freight Local v. Southern Forwarding Co., 424 F.Supp. 11, 13 n. 13 (M.S. Tenn. 1976).

APPENDIX B

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

TRAILER TRAIN COMPANY, a corporation and RAILBOX COMPANY, a corporation,	)	NO. 81-4188
	)	DC NO. C-80-4399 SW
Plaintiffs-Appellees,	)	
v.	)	OPINION
STATE BOARD OF EQUALIZATION,	)	
Defendant-Appellant.	)	

Appeal from the United States District Court for the Northern District of California
Spencer Williams, District Judge, Presiding Argued and Submitted March 10, 1982

CHOY, Circuit Judge:

Before: HAYNSWORTH,* and CHOY, Circuit Judges, and JAMESON,** District Judge.

*The Honorable Clement Haynsworth, Senior United States Circuit Judge for the Fourth Circuit, sitting by designation.

**The Honorable William J. Jameson, Senior United States District Judge for the District of Montana, sitting by designation.

The issue in this case is whether the district court erred in granting a preliminary injunction preventing the California State Board of Equalization (Board) from collecting an amended property-tax bill levied on appellees' railroad cars. The district court found that the imposition of the additional tax impermissibly conflicted with § 306 of the Railroad Revitalization and Regulatory Reform Act of 1976 (the 4-R Act), current version at 49 U.S.C. § 11503[1], which prohibits the taxation of rail-transportation property at a rate higher than the rate generally applicable to commercial and industrial property in the same assessment jurisdiction. We concur in the district court's underlying conclusions that § 11503 applies to the Board's attempt to collect the additional tax, that § 11503 authorizes a district court to enjoin tax-rate discrimination,

and that, under the circumstances of this the traditional prerequisites for preliminary injunction need not be satisfied. We find, however, that the district court's method of selecting the tax rate generally applicable to commercial and industrial property, which is the necessary first step in determining the existence of tax-rate discrimination, was defective. We therefore affirm in part, and vacate and remand in part.

I. Facts[2/]

California classifies and taxes the bulk of its property as "secured" or "unsecured."[3/] The secured and unsecured tax rolls each contain both real and personal property. The secured tax rate is calculated anew each fiscal year, while the unsecured tax rate is equal to the tax rate applied to secured property in the preceding fiscal year.

Cal. Const. art. XIII, § 12; Cal. Rev. & Tax Code § 2905 (West 1970 & Supp. 1982).

Private railroad cars are considered personal property and are subject to a separate tax under California's Private Railroad Car Tax Law, Cal. Rev. & Tax Code § 11401 (West 1970 & Supp. 1982). The tax rate for private railroad cars is the average rate of general property taxation for the preceeding year, id., which is basically the weighted average of the prior year's secured and unsecured tax rates.

In June 1978, California voters approved Proposition 13, Cal. Const. art. XIIIA, which limits the tax rate applicable to real property. Relying on Article XIII, section 2, of the California Constitution, which requires that personal property not be taxed at a rate higher than that applied to real property in the same jurisdiciton, the

Board at that time determined that the Proposition 13 tax-rate limitation must also be applied to limit the tax on private railroad cars. Accordingly, it levied a tax on railroad cars owned by the Trailer Train Company and the Railbox Company (the Companies) for fiscal year 1978-79 at the lower Proposition 13 rate, estimated at $4.85 per hundred dollars of assessed value, instead of the usual rate prescribed by the Private Railroad Car Tax Law. This latter tax rate, calculated by taking the weighted average of the secured and unsecured rates for fiscal year 1977-78, would have amounted to $10.68 per hundred dollars of assessed value.

The situation remained unchanged until August 1980, when the California Supreme Court ruled that the Proposition 13 tax-rate limitation did not apply to real or personal property on the 1978-79

unsecured roll. Board of Supervisors v. Lonergan, 27 Cal.3d 855, 616 P.2d 802, 167 Cal. Rptr. 820 (1980), cert. denied, 450 U.S. 918 (1981). The Board interpreted Lonergan as rendering improper its application of the Proposition 13 tax-rate limitation to private railroad car for fiscal year 1978-79.[4/] Therefore, in October 1980, the Board recalculated the tax on private railroad cars for 1978-79, this time using the rate of $10.68 per hundred dollars of assessed value -- the rate the Board would have initially applied had it not believed Proposition 13 to be controlling. The Board levied and attempted to collect from the Companies an additional tax equal to the difference between the tax computed at the $10.68 rate and the tax previously paid at the $4.85 rate.

The Companies sued to enjoin the Board from collecting this additional tax

on the ground that the additional tax discriminated against owners of rail-transportation property in violation of 49 U.S.C. § 11503. The district court granted the Companies' motion for preliminary injunction, and the Board filed this appeal.

On appeal, the Board argues that the district court erred in granting the preliminary injunction because (1) the alleged discriminatory tax was imposed before the effective date of § 11503; (2) § 11503 does not authorize a district court to enjoin tax-rate discrimination; (3) there was no tax-rate discrimination; and (4) the necessary preconditions for the grant of preliminary injunction have not been met.

II. Discussion

A. Application of § 11503

The 4-R Act was passed in 1976, but the effective date of § 11503 was

postponed for three years to February 1979. Pub. L. No. 94-210, § 2(b), 90 Stat. 31, 54 (1976). The assessment of the Companies' property on which the additional tax is based was made in 1978, several months before the effective date of § 11503. The Board, however, tried to collect this additional tax in 1980, after the effective date of § 11503. Since § 11503(b) prohibits not only assessments which discriminate against rail-transportation property, but also the collection of taxes based on discriminatory tax rates, § 11503 appears clearly to apply to the Board's collection of the additional tax.

The Board puts forth a creative argument in an attempt to avoid the application of § 11503. It argues that since the additional tax is based on assessments made in 1978 and is intended merely to correct its mistaken

calculation of taxes owed for that year, the additional tax should relate back to 1978 and thus be deemed to have been imposed before the effective date of § 11503.

The Board's relation-back argument is not persuasive. Congress' purpose in postponing the effective date of § 11503 was to afford the states sufficient time to comply with the statute's prohibition against discriminatory tax treatment of railroad property. See State of Tennessee v. Louisville & Nashville Railroad Co., 478 F. Supp. 199, 209 (M.D. Tenn. 1979), aff'd, 652 F.2d 59 (6th Cir.), cert. denied, 102 S. Ct. 135 (1981). It was not to provide states with an additional opportunity to impose and collect discriminatory taxes. Allowing the additional tax to relate back to 1978 and thus escape the application of § 11503 not only would subvert

Congress' purpose in postpoing the statute's effective date, but also would run counter to the basic policy of § 11503 to prohibit discriminatory taxation of railraod property.[5/]

B. Power to Enjoin Tax-Rate Discrimination

Whether a district court has jurisdiction under § 11503 to enjoin the use of a discriminatory tax-rate presents a sticky exercise in statutory interpretation. Subsection (b) of § 11503 prohibits, among other things, the discriminatory assessment of rail-transportation property and the levy or collection of a tax based on discriminatory tax rates. The first sentence of subsection (c) then grants the district court jurisdiction to prevent a violation of subsection (b). But the second sentence of subsection (c) provides that "[r]elief may be granted under this subsection only if the ratio

of assessed value to true market value of rail transportation property exceeds by at least 5 percent, the ratio of assessed value to true market value of other commercial and industrial property in the same assessment jurisdiction." (Emphasis added.) Under a narrow, literal reading of § 11503, it would appear that, while tax-rate discrimination constitutes a violation of the statute, injunctive relief can only be granted if the tax-rate discrimination is accompanied by an assessment-ratio discrimination of at least 5 percent.

A statute, however, should not be interpreted so narrowly as to defeat its obvious intent. In interpreting a statute, the court's objective should be to ascertain congressional intent and give effect to legislative will. Philbrook v. Glodgett, 421 U.S. 707, 713-14 (1974); United States v. American

Trucking Association, Inc., 310 U.S. 534, 542 (1940).

The purpose of § 11503 is "to eliminate the long-standing burden on interstate commerce resulting from discriminatory State and local taxation of common and contract carrier transportation property."[6/] Congress recognized that discrimination against rail transportation property can result from either assessment variation or tax-rate variation. S. Rep. No. 1085, 92d Cong., 2d Sess. 5 (1972); S. Rep. No. 630, 91st Cong., 1st Sess. 3 (1969). It thus drafted § 11503 to prohibit the discriminatory use of either of these methods. Congress also believed that a federal court remedy for carriers subject to discriminatory taxation was necessary because state courts were not providing them with a plain, speedy, and efficient remedy. S. Rep. No. 1085, 92d Cong., 2d

Sess. 4-5 (1972); S. Rep. No. 630, 91st Cong., 1st Sess. 6-7 (1969). It thus included in § 11503 a procedural component which authorizes victims of discrimination to seek injunctive relief in federal court.

Given the basic concern motivating Congress' enactment of § 11503, Congress could not have intended that the statute be construed as authorizing the district court to enjoin a tax-rate discrimination only when it is accompanied by an assessment-ratio discrimination. Such a literal reading of § 11503 ignores Congress' recognition that discriminatory taxation of carriers can result from either assessment-ratio or tax-rate discrimination. It also undermines Congress' intent to provide discrimination victims with an injunctive federal-court remedy by placing arbitrary limits

on those who could apply for such relief.

The literal reading of § 11503 leads to the absurd result that a district court could enjoin the use of an assessment-ratio excessive by 6 percent, but would be powerless to enjoin the use of tax-rate excessive by 80 percent unless it were also accompanied by the use of an excessive assessment ratio. A court may look beyond the express language of a statute where a literal interpretation thwarts the purpose of the overall statutory scheme or leads to an absurd result. Cantwell v. County of San Mateo, 631 F.2d 631, 634 (9th Cir. 1980), cert. denied, 101 S. Ct. 1703 (1981); International Telephone and Telegraph Corp. v. General Telephone and Electronics Corp., 518 F.2d 913, 917-18 (9th Cir. 1975); see United States v. American Trucking Associations, Inc., 310 U.S. at 543-44. In view of Congress' clear purpose in

enacting § 11503, we hold that the statute is properly construed as granting the district court jurisdiction to enjoin a tax-rate discrimination independent of any assessment-ratio discrimination.7/

C. Existence of Tax-rate Discrimination

Section 11503(b)(3) prohibits the taxation of rail transporation property at a tax rate higher than the tax rate generally applicable to commercial and industrial property in the same assessment jurisdiction.8/ To discern whether California has imposed a discriminatory tax rate in violation of § 11503(b)(3), it is necessary to compare the tax rate applied to the Companies' railroad cars with that generally applicable to commercial and industrial property. Our task is complicated by the fact that, while the rate applied to the Companies' railroad cars is readily available

($10.68 per $100.00 of assessed value), California has no specific tax rate for commercial and industrial property. Instead, California classifies and taxes its property as "secured" or "unsecured" with commercial and industrial property appearing on both the secured and unsecured rolls.[9/] The secured rate for the year in issue, the 1978-79 fiscal year, was $4.70 per $100.00 of assessed value. The unsecured rate for that year, under the Lonergan decision, should have been set at $10.63 per $100.00 of assessed value.[10/]

Neither § 11503 nor its legislative history provides much guidance as to what should be done when a specific rate generally applicable to commercial and industrial property is not readily apparent. We find, however, that for this case the following approach best conforms to the statute's language and

fulfills its intent: The 1978-79 secured and unsecured rolls must be examined to determine which roll contained the majority of California's commerical and industrial property. The tax rate applicable to the roll that contained the majority of the commercial and industrial property shall be deemed the rate generally applicable to commercial and industrial property and serve as the base rate for comparison against the Companies' $10.68 rate.[11/] If the determination of which roll contained the majority of the state's commercial and industrial property in the 1978-79 fiscal year is not possible, the average tax rate for all property shall be used as the basis for comparison.

In selecting the base rate for comparison against the Companies' rate, the district court failed to focus on the crucial issue of which tax roll

contained the majority of the state's commercial and industrial property. Instead, the court apparently assumed that since California has no specific rate for commercial and industrial property, the rate generally applicable to commercial and industrial property could not * be determined.[12/] It then interpreted the latter portion of § 11503(c) as requiring the use of the average tax rate for all property as the basis for comparison in this assumed situation.[13/]

Under our reading of § 11503, the fact that California has no specific rate for commercial and industrial property does not mean that a rate generally applicable to such property cannot be determined. The absence of a specific rate merely requires that the inquiry be shifted to which roll, the secured or unsecured, contained the majority of the

state's commerical and industrial property in the 1978-79 fiscal year.

Because the district court misinterpreted § 11503, it failed to make this crucial inquiry. Its method of selecting the base rate for comparison against the Companies' rate was thus materially flawed and its consequent finding of discrimination cannot be accepted. Unfortunately, the record does not contain sufficient evidence for us independently to determine which roll contained the majority of the state's commercial and industrial property. The case must therefore be remanded for that determination. On remand, we instruct the district court to adopt the approach we have set forth in this opinion in selecting the proper base rate for comparison.[14/] Such a selection is, of course, a necessary step in determining whether California has imposed

a discriminatory tax rate on the Companies' railroad cars.

D. Preconditions for Preliminary Injunction

Finally, the Board argues that the district court erred in granting the preliminary injunction without first requiring the establishmnnt of the standard equitable prerequisites for such relief.[15/] We disagree.

The standard requirements for equitable relief need not be satisfied when an injunction is sought to prevent the violation of a federal statute which specifically provides for injunctive relief. Atchison, Topeka and Santa Fe Railway v. Lennen, 640 F.2d 255, 259-61 (10th Cir. 1981); see, United States v. City and County of San Francisco, 310 U.S. 16, 30-31 (1940). Section 11503 clearly falls within this exception because its subsection (c) specifically authorizes a

district court to grant injunctive relief to prevent a violation of the statute.[16/] See Atchison, Topeka and Santa Fe Railway v. Lennen, 640 F.2d 255 (expressly applying exception to § 11503). The Board provides no convincing reason why this exception should not apply in the present case.

III. Conclusion

We are in basic agreement with the district court with respect to the following findings: (1) Section 11503 is fully applicable to the Board's attempt to collect the additional tax levied against the Companies' railroad cars; (2) the statute authorizes the district court to enjoin tax-rate discrimination independent of any assessment-ratio discrimination; and (3) traditional prerequisites for equitable relief need not be satisfied before a preliminary injunction may be issued

under § 11503.

However, because we also find that the district court erred in selecting the tax rate generally applicable to commercial and industrial property, we cannot affirm its determination that the Board imposed a discriminatory tax rate on the Companies' railroad cars. Section 11503 requies that the rate generally applicable to commercial and industrial property be used as the base tax rate for comparison against the Companies' rate for purposes of determing discrimination. On remand we instruct the district court to ascertain which tax roll, the secured or unsecured, contained the majority of California's commerical and industrial property in fiscal year 1978-79. The tax rate applicable to the selected roll shall be the rate generally applicable to commercial and industrial property and

shall be used as the base rate for comparison against the Companies' rate. If it is impossible to determine which roll contained the majority of the state's commercial and industrial property, the average tax rate for all property shall be used as the basis for comparison.

AFFIRMED in part; VACATED and REMANDED in part.

APPENDIX C

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

TRAILER TRAIN COMPANY, a corporation and RAILBOX COMPANY, a corporation,	)	NO. 81-4188
	)	No. District of California
Plaintiffs-Appellees,	)	
v.	)	ORDER
STATE BOARD OF EQUALIZATION,	)	
Defendant-Appellant.	)	

Before: HAYNSWORTH,* and CHOY, Circuit Judges and JAMESON,** District Judge.

The panel as constituted in the above case has voted to deny the petition for rehearing. The petition for rehearing is denied.

*The Honorable Clement Haynsworth, Senior United States Circuit Judge for the Fourth Circuit, sitting by designation.

**The Honorable William J. Jameson, Senior United States District Judge for the District of Montana, sitting by designation.

APPENDIX D

§ 11503. Tax discrimination against rail transportation property

(a) In this section --

(1) "assessment" means valuation for a property tax levied by a taxing district.

(2) "assessment jurisdiction" means a georgraphical area in a State used in determining the assessed value of property for ad valorem taxation.

(3) "rail transportation property" means property, as defined by the Interstate Commerce Commission, owned or used by a rail carrier providing transportation subject to the jurisdiction of the Commission under subchapter I of chpater 105 of this title.

(4) "commercial and industrial property" means property, other than transportation property and land used primarily for agricultural purposes or timber growing, devoted to a commercial or industrial use and subject to a property tax levy.

(b) The following acts unreasonably burden and discriminate against interstate commerce, and a State, subdivision of a State, or authority acting for a State or subdivision of a State may not do any of them:

(1) assess rail transportation property at a value that has a higher ratio to the true

market value of the rail transportation property than the ratio that the assessed value of other commercial and industrial property in the same assessment jurisdiction has to the true market value of the other commercial and industrial property.

(2) levy or collect a tax on an assessment that may not be made under clause (1) of this subsection.

(3) levy or collect an ad valorem property tax on rail transportation property at a tax rate that exceeds that tax rate applicable to commercial and industrial property in the same assessment jurisdiction.

(4) impose another tax that discriminates against a rail carrier providing transportation subject to the jurisdiction of the Commission under subchapter I of chpater 105 of this title.

(c) Notwithstanding section 1341 of title 28 and without regard to the amount in controversy or citizenship of the parties, a district court of the United States has jurisdiction, concurrent with other jurisdiction of courts of the United States and the States, to prevent a violation of subsection (b) of this section. Relief may be granted under this subsection only if the ratio of assessed value to true market value of rail transportation property exceeds by at least 5 percent, the ratio of assessed

value to true market value of other commercial and industrial property in the same assessment jurisdiction. The burden of proof in determining assessed value and true market value is governed by State law. If the ratio of the assessed value of other commercial and industrial property in the assessment jurisdiction to the true market value of all other commercial and industrial property cannot be determined to the satisfaction of the district court through the random-sampling method known as a sales assessment ratio study (to be carried out under statistical principles applicable to such a study), the court shall find, as a violation of this section--

(1) an assessment of the rail transportation property at a value that has a higher ration to the true market value of the rail transportation property than the assessed value of all other property subject to a property tax levy in the assessment jurisdiction has to the true market value of all other commercial and industrial property; and

(2) the collection of an ad valorem property tax on the rail transportation property at a tax rate that exceeds the tax ration rate applicable to taxable property in the taxing district.

Pub.L. 95-473, Oct. 17, 1978, 92 Stat. 1445.

APPENDIX E

ARTICEL XIIIA. TAX LIMITATION [NEW]

§ 1. Ad valorem tax on real property; maximum amount--

"Section 1. (a) The maximum amount of any ad valorem tax on real property shall not exceed one percent (1%) of the full cash value of such property. The one percent (1%) tax to be collected by the counties and apportioned according to law is the district within the counties.

(b) The limitation provided for in subdivision (a) shall not apply to ad valorem taxes or special assessments to pay the interest and redemption charges on and indebtedness approved by the voters prior to the time this section becomes effective. (Added June 6, 1978.)

§ 2. Full cash value; full cash value base; exclusive of any active solar energy system--

Sec. 2. (a) The full cash value means the county assessor's valuation of real property as shown on the 1975-76 tax bill under "full cash value" or, thereafter, the appraised value of real property when purchased, newly constructed, or a change in ownership has occurred after the 1975 assessment. All real property not already assessed up to the 1975-76 full cash value may be reassessed to reflect that valuation. For purposes of this section, the term "newly constructed" shall not include real property which is reconstructed after a disaster, as declared by the Governor, where the fair market value of such real property, as reconstructed, is comparable to its fair market value prior to the disaster."

APPENDIX F

Art. 13, § 2. Taxation of personal property; Classification; limitation--

"Sec. 2. The Legislature may provide for property taxation of all forms of tangible personal property, shares of capital stock, evidences of indebtedness, and any legal or equitable interest therein not exempt under any other provision of this article. The Legislature, two-thirds of the membership of each house concurring, may classify such personal property for differential taxation or for exemption. The tax on any interest in notes, debentures, shares of capital stock, bonds, solvent credits, deeds of trust, or mortgages shall not exceed four-tenths of one percent of full value, and the tax per dollar of full value shall not be higher on personal property than on real property in the same taxing jurisdiction." (Added Nov. 5, 1974.)

APPENDIX G

Revenue and Taxation Code § 11401. Levy and entry of tax--

"On or before October 1, the board shall levy upon private railroad cars assessed under this part, for each year, a tax computed at the next preceding year's average rate of general property taxation in the state and shall enter the tax upon a record maintained by the board for that purpose."

APPENDIX H

91st CONGRESS
1st Session

S. 2289
[Report No. 91-630]

IN THE SENATE OF THE UNITED STATES

May 29, 1969

Mr. Magnuson (for himself, Mr. Hart, Mr. Hartke, Mr. Inoute, Mr. Moss and Mr. Prouty) introduced the following bill; which was read twice and referred to the Committee on Commerce

December 20, 1969

Reported by Mr. Magnuson, with amendments

A BILL

To amend the Interstate Commerce Act, as amended, in order to make unlawful, as unreasonable and unjust discrimination against and an undue burden upon interstate commerce, certain property tax assessments of common and contract carrier property, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled. That the Interstate Commerce Act, as amended, is amended by inserting after section 25 thereof a new section 25a as follows:

"SEC. 25a (1) Notwithstanding the provisions of section 202(b), the following action by any State, or subdivision or agency thereof, whether such action be taken pursuant to a constitutional provision, statute, or administrative order or practice, or otherwise, is hereby declared to constitute an unreasonable and unjust discrimination against and an undue burden upon interstate commerce and is hereby forbidden and declaredeto be unlawful: (a) the assessment (but only to the extent of any portion based on excessive values as hereinafter described), for purposes of a

property tax levied by any taxing district of transportation property owned or used by any common or contract carrier subject to economic regulation pursuant to the provisions of the Interstate Commnrce Act at a value which bears a higher ratio to the true market value of such transportation property than the assessed value of all other property in the assessment jurisdiction in which is included such taxing district and subject to a property tax levy bears to the true market value of all such other property; (b) the collection of any tax on the portion of said assessment so declared to be unlawful; or (c) the collection of any ad valorem property tax on such transportation property at a tax rate higher than tax rates applicable to any other property in the taxing district.

"(2) As used in this section:

"(a) The term 'transportation property' means transportation property as defined in the regulations of the Interstate Commerce Commission.

"(b) The term 'assessment jurisdiction' means a geographical area, such as a State or a county, city or township within a State, which is a unit for purposes of determining assessed value of property for ad valorem taxation.

"(3) Notwithstanding the provisions of section 1341, title 28, United States Code, or of the constitution or laws of an State, the district courts of the United States shall have jurisdiction, upon complaint and after hearing, to issue such writs of injunction or other proper process, mandatory or otherwise, as may be necessary to restrain any

State, or subdivision or agency thereof, or any person from doing anything or performing any act declared by paragraph (1) hereof to be unlawful: Provided, however, that such jurisdiction shall not be exclusive of that which any Federal or State court may otherwise have: And provided further, that the provisions of this paragraph shall not become effective until three years after the date of enactment: And provided further, That no relief shall be granted hereunder unless the assessment percentage applied to carrier transportation property exceeds by at least 5 per centum the assessment percentage applied to all other preoprty in the assessment jurisdiction."

APPENDIX I

GEORGE DEUKMEJIAN, Attorney General
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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

TRAILER TRAIN COMPANY, a corporation,	CIVIL ACTION NO. C 80 4399 SW
Plaintiffs,	DECLARATION OF JEFFREY L. REYNOLDS
v.	
STATE BOARD OF EQUALIZATION,	
Defendant.	

I, Jeffrey L. Reynolds, certify and declare as follows:

1. I am presently Chief of the Statistical Research and Consulting Division of the State Board of

Equalization. I have held this position for eighteen months and have been employed by the Board in the division for the past fourteen years. I was personally responsible for the preparation of Table A on page 22 of the Annual Report 1978-79 of the California State Board of Equalization which has been filed as Exhibit C to Plaintiff's Verified Complaint. The facts set forth herein are personally known to me, and I have first-hand knowledge of the same. If called as a witness, I could and would competently testify thereto under oath.

2. The figure 4.79 that appears on the "1978-79" line and under the "Nominal" column of Table A, Exhibit C, represents the average tax rate of all property in the state and as such it includes all of the real and personal property in the state whether that property was residential, commercial, or

industrial. In fact, it is the substantial secured real property component, which only is subject to the one percent tax for the first time in 1978, that is responsible for the reduction from 10.68 of the prior year. Since Plaintiff's private railroad cars are only personal property, they do not correspond to the class or usage of the variety of properties subject to the 4.79 rate.

3. The proper rate for comparison purposes is 10.63 which represents the average rate that would apply to other commercial and industrial personal property that is taxed on the unsecured rolls of the counties. This rate is equal to and derived from the 1977 rate which was applied to the real property on the secured roll. The average figure, 10.63, does not appear in any publication of the Board because there is no mandate for its calculation.

4. The foregoing explanation was forwarded to Plaintiff's attorney by letter dated December 2, 1980, a copy of which is appended hereto.

I certify and declare under penalty of perjury that the foregoing is true and correct.

IN WITNESS WHEREOF, I have hereunto affixed my signature and the seal of said Board this 6th day of January 1981, at Sacramento, California.

Jeffrey L. Reynods, Chief
Statistical Research and Consulting
Division

83-14

Office - Supreme Court, U.S.
FILED
AUG
ALEXANDER L. STEVAS,

No.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1983

STATE BOARD OF EQUALIZATION,
Petitioner,

v.

TRAILER TRAIN COMPANY AND RAILBOX COMPANY,
Respondents.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT.

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BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT.

QUESTIONS PRESENTED

1. Did the Ninth Circuit err in holding that in levying a tax on respondent's rail transportation property, at a rate which greatly exceeds the rate at which the majority of other commercial and industrial property in the State of California is taxed, Petitioner violated Section 306 of the Railroad Revitalization and Regulatory Reform Act of 1976?[1]

2. Does the Ninth Circuit opinion, which concerns a comparison between the tax rate applied to rail transportation property and the tax rates applied to commercial and industrial property on the secured and unsecured local tax rolls, conflict

[1] Section 306 of The Railroad Revitalization and Regulatory Reform Act of 1976 is codified at 49 U.S.C. § 11503. Section 306 is reproduced in full as Appendix A.

with the Fourth Circuit Opinion in *Clinchfield Railroad Co.* v. *Lynch*, 700 F.2d 126 (4th Cir. 1983) which concerns a comparison between the assessment of rail transportation property and the differential assessment of locally assessed commercial and industrial real and personal property?

3. Is the Ninth Circuit's opinion that injunctive relief may, in the court's discretion, be granted without a showing of the traditional requirements for injunctive relief where a federal statute authorizes injunctive relief to prevent violation of the statute, consistent with the Supreme Court's opinion in *Weinberger* v. *Romero-Barcelo*, 456 U.S. 305 (1983)?

STATEMENT OF THE CASE

Section 306 of the Railroad Revitalization and Regulatory Reform Act of 1976 (the "4-R Act") prohibits the assessment, levy or collection of discriminatory state taxes on rail transportation property as an unreasonable burden on interstate commerce. Respondents in this case sought and obtained pursuant to Section 306(1)(c) of the 4-R Act a preliminary injunction against Petitioners enjoining the collection of 1978-79 taxes which were levied by Petitioner at a discriminatory tax rate. Section 306(1)(c) prohibits the levy or collection of taxes on rail transportation property at a rate which exceeds the tax rate generally applicable to other commercial and industrial property in the same taxing jurisdiction.

In California commercial and industrial property is taxed on both the secured and the unsecured tax rolls. For reasons which will be explained more fully below, commercial and industrial property on the 1978-79 unsecured roll was (like Respondent's railroad cars) taxed at a rate which was more than double the tax rate applied to commercial and industrial property on the secured tax roll. Petitioners contended below, that to determine whether the tax on Respondent's property was discriminatory, the court should compare the tax levied on Respondents property with the equally discriminatory tax levied on the unsecured roll. The district court rejected this obvious attempt to avoid the prohibitions of the federal statute. Because there was no tax rate applicable to commercial and industrial property *per se*, the court enjoined collection of any taxes on Respondent's property at a rate which exceeded the tax rate generally applicable to all other taxable property in the state.

On appeal, the Ninth Circuit affirmed in part, but disagreed in part. The Ninth Circuit reasoned that under Section 306(1)(a) the tax rate "generally applicable to commercial and industrial property" is the tax rate applied to the "majority" of commercial and industrial property and remanded the case for a determination whether the majority of commercial and industrial property is on the secured or the unsecured tax roll. Petitioner, evidently conceding that the majority of commercial and industrial property is on the secured tax roll, seeks to have this Court review the Ninth Circuit's decision. Petitioner contends that there is a "conflict" between the Ninth Circuit's opinion in this case and the Fourth Circuit's opinion in *Clinchfield Railroad Co.* v. *Lynch*, 700 F.2d 126 (4th Cir. 1983). The facts and the issues addressed in these cases, however, are so unrelated that it is readily apparent that no such conflict exists.

Petitioner State Board of Equalization ("State Board") assesses and levies taxes on Respondent's railroad cars pursuant to the California Private Railroad Car Tax Law ("PRCTL").[2] All other property taxes in the State of California are levied by local taxing authorities pursuant to general property tax law.[3] The PRCTL provides that Petitioner shall annually levy a tax on private railroad cars at the average general tax rate levied on other property by local taxing authorities for the prior year.[4]

In the 1978-79 tax year, Proposition 13 (now California Constitution Article XIIIA) limited the tax rate applicable to real property. Because California Constitution Article XIII, § 2 requires that personal property not be taxed at a rate higher than the tax on real property, the State Board initially determined that for the 1978-79 tax year, both real and personal property (including private railroad cars) should be taxed at the limited Proposition 13 rate. Private railroad cars, therefore, were initially taxed at the estimated average general rate for the 1978-79 tax year of 4.85 dollars per hundred dollars of assessed value rather than at the prior year's average general rate of 10.63.

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[2] *See* Cal. Rev. & Tax. Code §§ 11201-11702.
[3] *See* Cal. Rev. Tax Code §§ 101-5842.
[4] *See* Cal. Rev. & Tax Code § 11401.

In *Board of Supervisors* v. *Lonergan*, 27 Cal. 3d 855 (1980) *cert. denied*, 450 U.S. 918 (1981) the State Board's determination that all property should be taxed uniformly was challenged on the grounds that California Constitution, Art. XIII, § 12 expressly requires that property on the *unsecured* tax roll be taxed at the prior years higher rate. All property taxed by local authorities is entered on either the secured or the unsecured local tax roll. The secured tax roll contains state assessed property and all locally assessed property (both real and personal) for which the payment of taxes is secured by real property. The unsecured roll contains all other locally assessed property (both real and personal) which is subject to a local property tax levy.[5]

In accordance with California Constitution Art. XIII, § 12, property on the *unsecured* roll is taxed at a rate equal to the prior year's rate for the *secured* tax roll. Ordinarily there is little difference between the rates applicable to the two different rolls. Proposition 13, however, caused a substantial reduction in property tax rates beginning in the 1978-79 tax year. In *Board of Supervisors* v. *Lonergan*, the California Supreme Court held that both real and personal property on the *unsecured* tax roll is required by California Constitution Article XIII, § 12 to be taxed at the *prior* year's rate for the *secured* tax roll and that the resulting higher tax rate for property on the 1978-79 unsecured roll did not violate either Article XIIIA, § 1 or Article XIII, § 2.

Because private railroad cars are taxed by the State in lieu of local taxes, they are not enrolled on either the secured or unsecured local tax rolls.[6] If they were taxed locally, they would be enrolled on the *secured* tax roll.[7] Thus Article XIII,

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[5] Cal. Rev. & Tax Code § 109 provides in part:

"Roll means the entire assessment roll. The '*secured roll*' is that part of the roll containing State assessed property and property the taxes on which are a lien on real property sufficient, in the opinion of the assessor, to secure payment of the taxes. The remainder of the roll is the '*unsecured roll*'. . . ." (Emphasis added.)

[6] *See* ¶13 of Stipulation attached hereto as Appendix B.

[7] "State assessed" property is taxed on the secured tax roll. Cal. Rev. & Tax Code § 109, *supra* at note 5. Rev. & Tax Code § 108 provides: " '*State assessed property*' means all property *required to be assessed by* [*Petitioner*] under Section 19 of Article XIII of the Constitution *and which is subject to local taxation*". (Emphasis added.) Private railroad cars are assessed by Petitioner under Cal. Const. Art. XIII, § 19.

§ 12 is not applicable to private railroad cars. Nonetheless, Petitioner State Board of Equalization used the decision in *Lonergan* to levy additional 1978-79 taxes on private railroad cars at the higher rate of 10.63. This without regard to the requirement of California Constitution Article XIII, § 2 that personal property shall not be taxed at a rate higher than real property and without regard to the prohibitions of Section 306 of the 4-R Act. Respondents challenged the Board's new levy both on the grounds that it violated the California Constitution and on the grounds that it violated Section 306 of the 4-R Act.

The 4-R Act prohibits the levy and collection of a tax on rail transportation property which exceeds the tax rate generally applicable to all other commercial and industrial property in the same taxing jurisdiction. Because in California there is no tax rate set for commercial and industrial property as such, and because over 90% of all taxable property is on the secured tax roll,[8] the district court enjoined collection of the tax at a rate higher than the tax rate "generally applicable to other taxable property" in the state which the district court apparently determined is the tax rate applicable to the *secured* tax roll.

The Ninth Circuit affirmed the lower court decision with one exception. The Ninth Circuit reasoned that there were two tax rates applicable to commercial and industrial property—the average rate applied to the secured tax roll and the average rate applied to the unsecured tax roll. To determine whether the tax on rail transportation property is discriminatory, the Ninth Circuit held, the tax rate on rail transportation property should be compared with whichever tax rate is applied to the "majority" of commercial and industrial property in the state. The case was therefore remanded for a determination of whether the secured or the unsecured roll contains the majority of commercial and industrial property. Recognizing that a remand proceeding would be fruitless to their cause, Petitioners have filed a Petition for Writ of Certiorari seeking a review of the Ninth Circuit decision.

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[8] *See* ¶12 of Stipulation (Appendix B).

REASONS FOR DENYING THE PETITION

A. THE NINTH CIRCUIT DECIDED CORRECTLY THAT A TAX ON RAIL TRANSPORTATION PROPERTY LEVIED AT A RATE WHICH GROSSLY EXCEEDS THE TAX RATE LEVIED ON MOST OTHER COMMERCIAL AND INDUSTRIAL PROPERTY IN THE STATE VIOLATES SECTION 306 OF THE 4-R ACT.

Section 306 (1)(c) of the 4-R Act prohibits the levy or collection of a tax on rail transportation property "at a rate higher than the tax rate generally applicable to commercial and industrial property in the same assessment jurisdiction." In the State of California there is no tax rate applicable to "commercial and industrial property" as such. Commercial and industrial property is taxed at the same general tax rate as all other property carried on the same local tax roll. Because of Proposition 13 and the decision in *Board of Supervisors* v. *Lonergan*, the 1978-79 tax rate applied to all property on the *unsecured* tax roll was more than double the tax rate applied to all property on the *secured* tax roll.

The question addressed by the Ninth Circuit was, given the two different tax rates applied to commercial and industrial property in the state, which tax rate should be used as the standard for comparison to determine whether Petitioner's tax on Respondents' rail transportation property is discriminatory under Section 306. The Ninth Circuit concluded that the words "generally applicable" should be interpreted in this case to mean the tax rate applied to the *majority* of commercial and industrial property in the state and remanded the case to the district court for a determination of which local tax roll contained the majority of commercial and industrial property. The only basis upon which Petitioner seeks a review of the Ninth Circuit's opinion on this issue is that it "conflicts" with the opinion of the Fourth Circuit in *Clinchfield Railroad Co.* v. *Lynch*, 700 F.2d 126 (4th Cir. 1983).

B. THE NINTH CIRCUIT OPINION DOES NOT CONFLICT WITH THE FOURTH CIRCUIT OPINION IN *CLINCHFIELD RAILROAD COMPANY* V. *LYNCH*.

The Petition depends entirely upon a contrived conflict between the Circuits. The issues in *Clinchfield* had nothing to do with the issues in this case other than that both opinions address issues raised under Section 306 of the 4-R Act. The similarity ends there.

1. The Ninth Circuit Decision Concerns *Tax Rate* Discrimination while the Fourth Circuit Decision Concerns *Assessment Ratio* Discrimination.

Ad valorem property taxation basically consists of two steps, the *assessment* (or purported valuation) of the property and the *levy* of a tax per dollar of assessed value (the tax rate). The *Clinchfield* opinion concerns Section 306(1)(a) which prohibits discrimination in the property tax *assessment* of rail transportation property. The Ninth Circuit opinion concerns § 306(1)(c) which prohibits the levy or collection of property taxes at a discriminatory *tax rate*.[9]

In the *Clinchfield* case the issue was whether the rail transportation property was assessed at a higher ratio of assessed value to true market value than the assessment ratio at which other commercial and industrial property was assessed. Defendant taxing authorities conceded that the plaintiff railroads had presented statistical evidence showing that commercial and industrial *real* property was assessed at a lower assessment ratio than rail transportation property was assessed. Defendants contended, however, that there was no evidence before the court concerning the assessment ratio for commercial and industrial *personal* property and that the railroads had therefore not established any discrimination as to the personal

[9] Petitioner argues that "personal and real property should be distinguished when comparing tax rates under the 4-R Act, because real property is *assessed* at a substantially lower *value* than personal property . . ." Petition at p. 10. (Emphasis added.) Petitioner confuses the *rate* at which taxes are levied with the assessment or *valuation* of the property being taxed. In California, there are different standards for the valuation of locally assessed real and personal property, but the same tax rate is applied to both real and personal property assessments on the same tax roll.

property portion of their assessment. The Court decided in favor of the railroads, nonetheless, because the defendant taxing authorities had failed to carry their burden of proof which the Court concluded shifted to the taxing authorities upon an initial showing by the railroads of discrimination in real property assessments.

The *Clinchfield* case not only concerns assessment ratio discrimination as opposed to tax rate discrimination, it also was decided on the basis of burden of proof issues which were not even raised in the Ninth Circuit case. Given the differences in the issues addressed by the Fourth Circuit in *Clinchfield* and the Ninth Circuit in this case, it takes a great leap of imagination to conjure up a conflict. In reality there is none.

2. The Ninth Circuit Decision Does Not Concern Real and Personal Property Classification Because in California the Same Tax Rate Is Applied to Both Real and Personal Property on the Same Tax Roll.

The Fourth Circuit opinion did seek to compare the assessment ratio for transportation real property and transportation personal property with the assessment ratios for commercial and industrial property of like kind. This was in response to the contention of defendants in that case that while there was discrimination in real property assessments there was no discrimination as to personal property assessments. In North Carolina personal property (like railroad transportation property) is assessed annually, while locally assessed real property is assessed only every eight years. Thus in *Clinchfield*, the differences in local commercial and industrial property assessments alleged by defendants were a function of real and personal property classification. That is, in North Carolina, property is assessed annually or only once every eight years depending solely on whether it is real or personal property. That is not the case here.

The differences in the local tax rates at issue in this case are a function of the tax roll on which property was enrolled for the 1978-79 tax year. The rate at which property was taxed in that year had nothing to do with whether the property was classified as real or personal property. There is both real and personal

property on both the secured and unsecured tax rolls. Thus the fact that Respondent's property is classified as personal property is irrelevant to the tax rate issue. The fact that one or the other local tax roll contains more or less real or personal property is equally irrelevant. The real question is which 1978-79 local tax rate was "generally applicable" to commercial and industrial property. The Ninth Circuit correctly determined that it was the tax rate applied to the local roll which contained the *majority* of commercial and industrial property in the state.

Petitioner relies on excerpts from the legislative history of Section 306 to establish that Section 306 "is not intended to interfere with the classification of property by a State *for rate purposes* into the traditional breakdown of real property [and] . . . personal property. . . ." Petition at p. 12. (Emphasis added.) This argument has no meaning where the State of California does not classify property as real and personal property *for rate purposes. All* property on the secured tax roll (both real and personal) is taxed at the *same* rate; all property on the unsecured roll (both real and personal) is taxed at the *same rate.*[10]

What the Petition amounts to is an argument that because the Fourth Circuit would compare the assessment ratio of transportation real and personal property with the assessment ratio for commercial and industrial property of like kind, the Ninth Circuit should have compared tax rates in the same fashion. It makes no sense to suggest that the Ninth Circuit, considering a tax rate case in the context of California property tax law after the adoption of Proposition 13, should have followed the approach taken by the Fourth Circuit in *Clinchfield* which considered differences in assessment ratios resulting from the assessment practices in the State of North Carolina. The courts were dealing with *different facts* and *different issues* and necessarily used *different reasoning* to reach their respective decisions.

---

[10] Petitioner misleads the Court by stating that "the estimated average tax rate for all commercial and industrial *personal* property in the state" is 10.63. Petition at p. 14-15. (Emphasis in original.) The 10.63 tax rate applied only to real and personal property on the 1978-79 *unsecured* roll. Real and personal property on the 1978-79 *secured* tax roll was taxed at a rate of 4.7. See Stipulation, ¶ 9 (Appendix B).

3. The Unique Tax Law and Assessment Practices of Each State May Require Different Applications of Section 306 in Order to Achieve the Remedial Purposes of the Federal Statute. Such Different Applications Should Not Be Treated as "Conflicts" Between the Circuits.

Section 306 of the 4-R Act is intended by Congress to eliminate the longstanding burden of state tax discrimination against rail transportation property. *Trailer Trail* v. *State Board of Equalization,* ___F.2d___ (9th Cir. 1983). The property tax law and assessment and taxation practices of each state, while similar in some respects, are in many respects unique. This requires that the Courts be given flexibility in their application of Section 306 so that the remedial purposes of the statute can be obtained in the specific factual and state law context of each case.

For example, in the State of Kansas, nearly all railroad property is classified as "*personal*" property including railroad real estate. *Atchison, Topeka, and Santa Fe Railway Co.* v. *Lennen,* 531 F. Supp. 220, 232 (D. Kan. 1981). If the Tenth Circuit were to follow the Fourth Circuit in determining whether Kansas taxing authorities are discriminating against rail transportation property, the Tenth Circuit would have to compare the assessment of *all* railroad property in Kansas (both real estate and personal property) with the assessment of other commercial and industrial *personal* property only. If personal property in Kansas is assessed at a higher assessment ratio than real property, this would allow the state to assess commercial and industrial *real estate* at a substantially lower assessment ratio than that at which it assesses railroad real estate. This merely because the State of Kansas by statute has deemed railroad real estate "personal property". The very purpose of Section 306 is to avoid this kind of discrimination. In light of the vagaries and peculiarities of state tax law and practice, the federal courts must have sufficient discretion and flexibility in the application of Section 306 to prevent such discrimination.

C. THE NINTH CIRCUIT OPINION IS CONSISTENT WITH THE SUPREME COURT'S OPINION IN *WEINBERGER* V. *ROMERO-BARCELO*

The District Court granted respondents' motion for a preliminary injunction because: (1) Section 306 expressly grants jurisdiction to the federal courts "to grant such mandatory or prohibitive injunctive relief, interim equitable relief, and declaratory judgments as may be necessary to prevent, restrain or terminate any acts in violation of the [statute]," (2) because "it [was] clear that a federal statute had been violated" and (3) because Respondents had "demonstrated a likelihood of success on the merits. While the court held that it was unnecessary in such circumstances to show irreparable harm, the court further determined that Respondents would suffer irreparable harm if the injunction were not granted. The Ninth Circuit affirmed that the standard requirements for equitable relief need not be satisfied "when an injunction is sought to prevent the violation of a federal statute which specifically provides for injunctive relief." Petitioner contends that the Ninth Circuit opinion is inconsistent with the Supreme Court's opinion in *Weinberger* v. *Romero-Barcelo*, 456 U.S. 302, (1983). These cases, however, decide two related but very *different* issues.

In *Weinberger*, the District Court denied plaintiff's motion to enjoin immediately discharges of pollutants which did not comply with the permit requirements of the Federal Water Pollution Control Act ("FWPCA"). The Court of Appeals vacated and remanded with orders to grant the injunction because, the Court concluded, the FWPCA had effectively withdrawn the District Court's equitable discretion, and the District Court had no authority to fashion any relief other than a prohibitory injunction to stop the violation of the statute. Upon review, the Supreme Court reversed the Court of Appeals holding that Congress in enacting the FWPCA, [had] not foreclosed the exercise of equitable discretion . . . " 456 U.S. at 320.

In the *Weinberger* opinion the Court considered whether the grant of jurisdiction to insure compliance with a statute through injunctive relief imposes an absolute duty to grant an

injunction when a violation is about to occur. The Court in *Weinberger* held that in such circumstances a court may in its discretion withhold injunctive relief. The opinion in *Weinberger* does not address the issue decided by the Ninth Circuit which was whether in exercising the Court's equitable discretion, the Court must in all cases make a determination whether the party seeking injunctive relief has satisfied the standard requirements for injunctive relief. Even if the Ninth Circuit is wrong on this point, Petitioners would not succeed. The District Court held that even though Respondents were not required to show irreparable harm, they had, in fact, done so. Thus under either rule Respondents were entitled to a preliminary injunction to prevent the collection of a clearly discriminatory tax which would have violated federal law.

CONCLUSION

Respondents respectfully urge the Court to deny the Petition for Writ of Certiorari. There is no "conflict" between the Ninth and Fourth Circuit opinions, and the Ninth Circuit decision is entirely consistent with the Supreme Court's decision in *Weinberger* v. *Romero-Barcelo.*

Dated: July 30, 1983

Respectfully submitted,

HELLER, EHRMAN, WHITE &
MCAULIFFE

By _____
Weyman I. Lundquist

APPENDIX A

PROHIBITING DISCRIMINATORY TAX TREATMENT OF TRANSPORTATION PROPERTY

SEC. 306. Part I of the Interstate Commerce Act (49 U.S.C. 1 et seq.), as amended by this Act, is further amended by inserting therein a new section 28, as follows:

"SEC. 28. (1) Notwithstanding the provisions of section 202(b), any action described in this subsection is declared to constitute an unreasonable and unjust discrimination against, and an undue burden on, interstate commerce. It is unlawful for a State, a political subdivision of a State, or a governmental entity or person acting on behalf of such State or subdivision to commit any of the following prohibited acts:

"(a) The assessment (but only to the extent of any portion based on excessive values as hereinafter described), for purposes of a property tax levied by any taxing district, of transportation property at a value which bears a higher ratio to the true market value of such transportation property than the ratio which the assessed value of all other commercial and industrial property in the same assessment jurisdiction bears to the true market value of all such other commercial and industrial property.

"(b) The levy or collection of any tax on an assessment which is unlawful under subdivision (a).

"(c) The levy or collection of any ad valorem property tax on transportation property at a tax rate higher than the tax rate generally applicable to commercial and industrial property in the same assessment jurisdiction.

"(d) The imposition of any other tax which results in discriminatory treatment of a common carrier by railroad subject to this part.

"(2) Notwithstanding any provision of section 1341 of title 28, United States Code, or of the consitution or laws of any State, the district courts of the United States shall have jurisdiction, without regard to amount in controversy or

citizenship of the parties, to grant such mandatory or prohibitive injunctive relief, interim equitable relief, and declaratory judgments as may be necessary to prevent, restrain, or terminate any acts in violation of this section, except that—

"(a) such jurisdiction shall not be exclusive of the jurisdiction which any Federal or State court may have in the absence of this subsection;

"(b) the provisions of this section shall not become effective until 3 years after the date of enactment of this section;

"(c) no relief may be granted under this section unless the ratio of assessed value to true market value, with respect to transportation property, exceeds by at least 5 per centum the ratio of assessed value to true market value, with respect to all other commercial and industrial property in the same assessment jurisdiction;

"(d) the burden of proof with respect to the determination of assessed value and true market value shall be that declared by the applicable State law; and

"(e) in the event that the ratio of the assessed value of all other commercial and industrial property in the assessment jurisdiction to the true market value of all such other commercial and industrial property cannot be established through the random-sampling method known as a sales assessment ratio study (conducted in accordance with statistical principles applicable to such studies) to the satisfaction of the court hearing the complaint that transportation property has been or is being assessed or taxed in contravention of the provisions of this section, then the court shall hold unlawful an assessment of such transportation property at a value which bears a higher ratio to the true market value of such transportation property than the assessed value of all other property in the assessment jurisdiction in which is included such taxing district and subject to a property tax levy bears to the true market value of all such other property, and the collection of any

ad valorem property tax on such transportation property at a tax rate higher than the tax rate generally applicable to taxable property in the taxing district.

"(3) As used in this section, the term—

"(a) 'assessment' means valuation for purposes of a property tax levied by any taxing district;

"(b) 'assessment jurisdiction' means a geographical area, such as a State or a county, city, township, or special purpose district within such State which is a unit for purposes of determining the assessed value of property for ad valorem taxation;

"(c) 'commercial and industrial property' or 'all other commercial and industrial property' means all property, real or personal, other than transportation property and land used primarily for agricultural purposes or primarily for the purpose of growing timber, which is devoted to a commercial or industrial use and which is subject to a property tax levy; and

"(d) 'transportation property' means transportation property, as defined in regulations of the Commission, which is owned or used by a common carrier by railroad subject to this part or which is owned by the National Railroad Passenger Corporation."

APPENDIX B

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

TRAILER TRAIN COMPANY, a corporation and RAILBOX COMPANY, a corporation, *Plaintiffs,* v. STATE BOARD OF EQUALIZATION, *Defendants.*	**Civil Action No. C 80 4399 SW** **Stipulation of Facts**

It is hereby stipulated and agreed, by and between the parties through their respective counsel, that, for the purpose of resolving issues presented by the pleadings in this action only, the following statements of fact are true and, all such facts are material.

1. Plaintiff Trailer Train Company ("Trailer Train") is a Delaware corporation engaged in the business of owning and operating a pool of freight train cars, subject to the jurisdiction of the Interstate Commerce Commission, for use by common carriers by railroad.

2. Plantiff Railbox Company ("Railbox)" is a Delaware corporation engaged in the business of owning and operating a pool of freight train cars, subject to the jurisdiction of the Interstate Commerce Commission, for use by common carriers by railroad.

3. On July 31, 1978, Defendant assessed all rail transportation property owned or used by Plaintiffs in their operations in the State of California as of March 1, 1978 as follows:

(a) *Property of Trailer Train Company*	
Full Cash value	$87,732,440
Assessed value	21,933,110

(b) *Property of Railbox Company*

Full cash value	$18,916,652
Assessed value	4,729,163

The above stated assessed values of Plaintiffs' property shall hereinafter be referred to collectively as the "1978-79 Assessments".

4. On or before October 1, 1978, Defendant levied a tax on the 1978-79 Assessments at the rate of 4.85 dollars per hundred dollars of assessed value. Said levy produced a tax in the amount of $1,063,755.84 on the Trailer Train assessment and a tax in the amount of $229,364.41 on the Railbox assessment.

5. By notice dated October 2, 1978, Defendant notified Plaintiffs of the amount of taxes levied on the 1978-79 Assessments and demanded payment of said taxes on or before December 10, 1978. Accordingly, Plaintiffs paid the full amount of said taxes on December 10, 1978.

6. By notice dated October 10, 1980, Defendant notified Trailer Train of taxes in the amount of $1,278,700.31 due with respect to the 1978-1979 assessment of Trailer Train property and demanded payment of said taxes on or before December 10, 1980.

7. By notice dated October 10, 1980, Defendant notified Railbox of taxes in the amount of $275,710.20 due with respect to the 1978-79 assessment of Railbox property and demanded payment of said taxes on or before December 10, 1980.

8. The additional amount of tax represents a levy on the 1978-79 Assessments at the rate of 10.68 dollars per hundred dollars of assessed value less the amount of taxes paid by Plaintiffs on December 10, 1978.

9. Taxes on all property on the 1978-79 secured tax roll were levied at an average rate of 4.70 dollars per hundred dollars of assessed value.

10. The estimated average rate of taxation of property on the 1977-78 secured tax roll is 10.63 dollars per hundred dollars of assessed value.

11. Taxes on all property on the 1978-79 unsecured tax roll were levied by 36 counties at an average rate of 4.70 dollars per hundred dollars assessed value. The average rate of

taxation of the 1978-79 unsecured roll in all 58 counties was 9.29 dollars per hundred dollars of assessed value.

12. In the 1978-79 tax year, approximately 91% of the value of all taxable property was on the secured tax roll. In the 1978-79 tax year, approximately 9% of the value of all taxable property was on the unsecured tax roll.

13. Plaintiffs' rail transportation property is assessed and taxed by the State Board of Equalization and is therefore not taxed on either the secured or the unsecured local tax roll.

Dated: January 22, 1981

TRAILER TRAIN COMPANY

By WEYMAN I. LUNDQUIST
Weyman I. Lundquist, *Attorney*

RAILBOX COMPANY

By WEYMAN I. LUNDQUIST
Weyman I. Lundquist, *Attorney*

GEORGE DEUKMEJIAN, ATTORNEY GENERAL, OF THE STATE OF CALIFORNIA

By GARY A. FARNON
Deputy Attorney General

CERTIFICATE OF SERVICE

SUPREME COURT OF THE)
)
UNITED STATES)

I, Stephen V. Bomse, certify as follows:

1. I am a member of the bar of the Supreme Court of the United States and am not a party to the action within.

2. My business address is 44 Montgomery Street, San Francisco, California 94104.

3. On July 30, 1983, I caused three true copies of the foregoing BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT to be served on counsel for the petitioner in the following manner:

Under my direction, an envelope was addressed as follows:

Calvin J. Abe, Esquire
Deputy Attorney General
6000 State Building
350 McAllister Street
San Francisco, California 94102

Three copies of the aforesaid Petition were enclosed in said envelope, and said envelope was then sealed, with postage thereon fully prepaid, and deposited in the United States mail at San Francisco, California, on July 30, 1983.

I certify that the foregoing is true and correct.

Executed at San Francisco, California this 30th day of July, 1983.

s/Stephen V. Bomse
Stephen V. Bomse

Office-Supreme Court, U.S.
FILED
SEP 26 1983
ALEXANDER L. STEVAS,
CLERK

No. 83-14

IN THE SUPREME COURT

OF THE

UNITED STATES

OCTOBER TERM, 1983

STATE BOARD OF EQUALIZATION

Petitioner,

v.

TRAILER TRAIN COMPANY, a Corporation, and RAILBOX COMPANY, a Corporation,

Respondents.

PETITIONER'S REPLY TO OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

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I

PRELIMINARY STATEMENT

Respondents' opposition brief has done much to confuse what in reality is a relatively straightforward case, from

both a factual and legal point of view. For the convenience of the Court, the factual and legal background of the case will be reviewed here.

The California Private Railroad Car Tax Law ("PRCTL"), Cal. Rev. and Tax Code section 11401 has been in existence since 1943. Prior to the implementation of Proposition 13 (The tax-reducing voter initiative later codified as California Constitution, Article XIII A), the PRCTL has been accepted, without legal challenge, as the method for assessing private railroad cars in California. As pointed out in the Petition,[1/] the PRCTL requires that private railroad cars be assessed at the previous year's average rate of general property taxation. It was only because of the implementation of Proposition 13 resulting in

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1. Petition, p. 6.

an unprecedented reduction in the average rate from 10.68 in the 1977-78 tax year to 4.85 in the 1978-79 tax year, that respondents were motivated to file a lawsuit alleging discrimination under the 4-R Act.[2/] In making these allegations, respondents are essentially seeking to have the tax-reducing provisions of Proposition 13 apply to their railraod cars, even after the California Supreme Court in Board of Supervisors v. Longeran (1980) 27 Cal.3d 855, held that Proposition 13 did not apply to property on the unsecured tax roll, which is generally defined as property, the taxes on which are not secured by a lien on

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2. Section 306, Railroad Revitalization and Regulatory Reform Act of 1976, 49 U.S.C. § 11503, et seq.

real property.[3/] The taxes on respondents' railroad cars are not secured by real property, therefore, under this definition, they would be on the unsecured roll.

Petitioner Board did not initially assess respondents' railroad cars in accordance with the requirements of the PRCTL for the 1978-79 tax year because of the provisions of California Constitution, Article XIII, section 2, which provided that personal property shall not be taxed at a rate higher than real property. Some 22 of California's 58 counties, apparently believing that

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3. Cal. Rev. & Tax Code §109 provides in part:

"'Roll' means the entire assessment roll. The secured roll is that part of the roll containing State assessed property and property the taxes on which are a lien on real property sufficient, in the opinion of the assessor, to secure payment of the taxes. The remainder of the roll is the 'unsecured roll'".

the provisions of Proposition 13 only applied to real property, did the opposite and applied the provisions of Proposition 13 to real propery only, not to personal property. As discussed above, the Lonergan case clarified that those 22 counties were correct; therefore under Lonergan petitioner should have assessed respondents' railroad cars in accordance with the requirements of the PRCTL. Following Lonergan, petitioner took corrective action by issuing its additional assessment which is the subject of respondents' underlying complaint.

The essential question in determing whether petitioner has assessed respondents' railroad cars in compliance with the 4-R Act, concerns what is the proper rate for comparison. The District Court used for comparison the same year's average rate of 4.85 and

concluded that the 10.68 rate applied to respondent's railroad cars was discriminatory. On the other hand, the Ninth Circuit found that the District Court's rate for comparison was incorrect and instructed the court to use for comparison the rate applicable to the tax roll, secured or unsecured, containing the majority of commerical and industrial property in the State.

Petitioner Board contends that its assessment of respondents' railroad cars under the PRCTL was proper and fully in accordance with the Fourth Circuit's Opinion in Clinchfield Railroad Company v. Lynch 700 F.2d 126 (4th Cir. 1983) in that the proper rate for comparison would be 10.63, which represents the average rate applied to property on the unsecured roll.[4/]

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4. Petition, App. I, p. 3.

ARGUMENT

I

THE NINTH CIRCUIT OPINION DIRECTLY CONFLICTS WITH THE FOURTH CIRCUIT OPINION IN CLINCHFIELD RAILROAD COMPANY v. LYNCH

As discussed above, the Ninth Circuit instructed the District Court to compare the tax rate applied to respondents' railroad cars with the rate applied to the tax roll, secured or unsecured, containing the majority of the commercial and industrial property in the state. By completely ignoring the basic distinction between personal and real property intended in the enactment of the 4-R Act, the Ninth Circuit's opinion directly conflicts with the Fourth Circuit's opinion in Clinchfield Railroad Company v. Lynch, supra.

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A. There is no Distinction of any Significance Between this Case and Clinchfield

Respondents' opposition brief is devoted primarily to their futile attempts at making distinctions between this case and Clinchfield. In fact, there are none of any consequence.

Initially, respondents argue that there is a distinction between the issues of alleged tax rate discrimination in this case and alleged assessment ratio discrimination in Clinchfield. This is a distinction purely of form, without any substance. Tax rate discrimination would be the application of a higher percentage rate to the assessed value, resulting in a higher tax. Assessment ratio discrimination would be the application of a higher ratio of assessed value to true market value, resulting in a higher tax. In either instance, there would be a discrepancy between the amount of tax

assessed upon properties of equal true market value, which is the evil sought to be corrected by the 4-R Act. A brief examination of the applicable provisions of the 4-R Act readily reveals that the provisions of section 306(1)(a) and 306(1)(c) only represent descriptions of the ways in which the prohibited discrimination can take place. All of the operative provisions of section 306 apply equally to subdivisions (1)(a) and (1)(c). It is apparent that there would be no basis for distinguishing the two cases based on the difference in the manner in which the alleged discrimination supposedly took place. As pointed out in the Petition, neither form of discrimination took place in this case.

Second, respondents argue that a distinction lies in the difference in the classification of property in California versus North Carolina, the

taxing authority in Clinchfield. In North Carolina, a distinction is made in the classification and frequency of assessments of property depending on whether it is personal or real.

In California, there is a vast distinction for rate purposes, between real and personal property. The distinction is underscored in the very definition of the secured and unsecured rolls. As discussed above, the essential difference between the two rolls lies in whether the taxes are sufficiently secured by a lien on real property. Under this definition, since respondents' railroad cars, like most personal property, are not secured by a lien on real propety, they would appropriately be on the unsecured roll.

Obviously, in classifying property onto the secured and unsecured rolls, California recognizes the distinction

between real and personal property. However, in making rate comparisons under the 4-R Act, classification of property for rate purposes into personal and real is not a prerequisite for the basic distinction between the two types of property to be recognized. As amply set forth in the petition,[5/] the legislative history of the 4-R Act reflects a clear intent to recognize a distinction between personal and real property in making comparisons under the 4-R Act. If this distinction were made in this case, the rate of 10.68 applied to respondents' railroad cars would have been compared with the rate of 10.63, which is the average rate applied to property on the unsecured roll, rather than the average rate general property taxations of 4.85.

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5. Petition, p. 12-14.

This would result in drastic reduction in any recovery by respondents in this case.

Third, respondents argue that Clinchfield may be distinguished on grounds that it involved burden of proof issues not present in the instant case. However, that burden of proof issue was clearly a peripheral one. The crux of the opinion was the court's recognition of the difference between personal and real property, and its resolve to make the rate comparisons on that basis.

B. The Case of Atchison, Topeka, and Santa Fe Railway Co. v. Lennen Is not Applicable

Respondents cite Atchison, Topeka and Santa Fe Railway Co. v. Lennen, 531 F.Supp. 220, 232 (D. Kan. 1981) in arguing that distinctions between states in their respective laws and assessment practices require that the courts be given "flexibility" in their application of the 4-R Act. Respondents point out

that in that case, Kansas classified nearly all railroad property, including railroad real estate, as personal property. That case is not at all applicable here, however, where petitioner Board of Equalization seeks to compare the rate applied to respondents' railroad cars, which are clearly personal property, to the rate applied to the unsecured roll, which likewise consists primarily of personal property.

C. The Ninth Circuit Should have Adopted the Fourth Circuit's Approach in Clinchfield

The legislative history behind the 4-R Act clearly reflects the intent that like property be compared in making rate comparisons under the 4-R Act.[6/] This intent is properly carried out with the Fourth Circuit's attempt in Clinchfield to distinguish between personal and real

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6. Petition, p. 12-14.

property. It is also inherently unfair for comparisons to be made between unlike types of property. In comparing the tax rates applied to respondents' railroad cars to the roll containing the majority of the commercial and industrial property in the state, when the secured roll contains almost all of the property in the state,[7/] the Ninth Circuit contravened the Congressional intent behind the 4-R Act. Moreover, it acted contrary to the Fourth Circuit's decision in Clinchfield.

II

THE NINTH CIRCUIT DECISION IS IN CONFLICT WITH WEINBERGER v. ROMERO-BARCELO

The case of Weinberger v. Romero-Barcelo (April 22, 1983 ___ U.S. ___, 72 L.Ed.2d 91, together with the

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7. Opposition Brief, App. B, pp.3.

legislative history of the 4-R Act, (See Petition, p. 22-23) clearly reflect that equitable considerations are to be made by the court prior to issuing injunctive relief. In the present case the Ninth Circuit held that the standard requirements for equitable relief need not be satisfied. Regardless of the District Court's findings in this case, the Ninth Circuit's erroneous holding on this point should be corrected in order to avoid further erroneous applications in reliance on its opinion.

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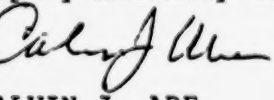
CONCLUSION

For all of the foregoing reasons, petitioner State Board of Equalization urges the Court to grant the writ of certiorari.

DATED: SEPTEMBER 23, 1983

Respectfully submitted,

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